

REMARKS

This paper is filed in response to the Office Action dated May 21, 2003. As this paper is filed on November 21, 2003 with a three-month petition for extension of time, the paper is timely filed.

I. Status of Amendments

Claims 1-5, 7, 8, 16, 18, 34, 35, 38, and 48-54 were pending prior to this amendment. By this amendment, applicants cancel claims 1-5, 7, 8, 16, 18 and 48-54, and add claims 55-66. Thus, claims 34, 35, 38 and 55-66 are now pending.

Because applicants previously paid fees for 6 independent and 47 total claims, applicants' amendments do not require a further fee to be paid.

Applicants further note that paragraph [0069] was amended herein to correct a typographical (spelling) error. No new matter has been added by this amendment.

II. Response to Office Action

A General Comments

Although the application describes various embodiments and makes various statements regarding the "invention," it is well settled that the legal scope of the invention is defined by the words of the claims and that it is improper to read features of the embodiments described in the specification into the claims. It should also be recognized that the term "invention" may be used to mean various different things.¹ For example, the term

¹ This is explained in the Glossary of Volume 1 of Chisum on Patents, where the term "invention" is defined as follows:

“invention” may be used to refer to the technical subject matter that has been invented; the term “invention” may be used to refer to subject matter which is nonobvious; and the term “invention” may be used to refer to subject matter defined by the claims of a patent. Thus, the mere fact that the present application uses the term “invention” in various statements does not mean that the scope of the claims is limited by such statements.

It should also be understood that, unless a term is expressly defined in the application using the sentence “As used herein, the term ‘_____’ is hereby defined to mean...” or a similar sentence, there is no intent to limit the meaning of that term, either expressly or by implication, beyond its plain or ordinary meaning, and such term should not be interpreted to be limited in scope based on any statement made in any section of the present application (other than the language of the claims). Finally, unless a claim element is defined by recital of the word “means” and a function without the recital of any structure, it is not intended that the scope of any claim element be interpreted based on the application of 35 U.S.C. § 112, sixth paragraph.

It is respectfully submitted that the foregoing comments regarding claim construction are consistent with 35 U.S.C. §112 and the Office practice of utilizing the “broadest reasonable interpretation” of claims.

It is also respectfully submitted that the claims are supported by the application, that the claims satisfy the written description requirement and the other requirements of 35 U.S.C. §112, and that no new matter is being added. In this regard, it is well settled that the specification need not reproduce the exact language of the claims to satisfy the written description requirement of §112, first paragraph. In re Wright, 9 U.S.P.Q.2d 1649, 1651 (Fed. Cir. 1989) (“[T]he claimed subject matter need not be described in haec verba in the specification in order for that specification to satisfy the description requirement.”). The

INVENTION – In patent law, the word ‘invention’ has several different meanings. It may refer to (1) the act of invention through original conception and reduction to practice; (2) subject matter described and/or claimed in a patent, patent application or prior art reference (e.g., a product or process); or (3) the patentability requirement of invention, first developed by the courts and now subsumed in the statutory requirement of nonobviousness. Thus, an applicant may have invented (1) an invention (2) which is unpatentable for lack of invention (3) because it is an obvious modification of an invention (2) used by others in this country before the invention (1) thereof by the applicant.

written description requirement of §112 can even be satisfied based solely on the drawings of a patent application. Vas-Cath Inc. v. Mahurkar, 19 U.S.P.Q.2d 1111, 1118 (Fed. Cir. 1991) ("These cases support our holding that, under proper circumstances, drawings alone may provide a 'written description' of an invention as required by §112").

B. The May 21 Office Action

Claims 1-4, 7, 8, 16, 48, and 50-54 were rejected in the May 21 Office Action based on one or more of the following references: Pascal (PCT Publ. No. WO 98/00210); Walker et al (U.S. Patent No. 6,224,486); Weiss et al. (U.S. Patent No. 6,287,202); and Pascal et al. (U.S. Patent No. 6,287,202). Claim 49 was rejected under 35 U.S.C. 112, second paragraph, as allegedly indefinite. Without prejudice to refiling these claims at a later date, applicants hereby cancel claims 1-5, 7, 8, 16, 18, and 48-54, thereby mooting the rejections.

Claims 34, 35, and 38 were found by the examiner to be allowable over the art of record. By this amendment, applicants adds claims 55-66 which depend from claim 34, and recite further subject matter that the applicants are entitled to claim.

Therefore, in view of the foregoing, it is respectfully submitted that the above application is in condition for allowance, and reconsideration is respectfully requested. If there is any matter that the Examiner would like to discuss, the Examiner is invited to contact the undersigned representative at the telephone number set forth below.

Respectfully submitted,

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